Hon: James H. Platt Jr
with compliments of
W. W. Hubbell.

PRODUCTIVE INDUSTRY
DESERVES JUST COMPENSATION.

APPEAL OF
WILLIAM WHEELER HUBBELL,

FOR

EQUITY AND JUSTICE,

BY PAYMENT

OF THE ADJUDICATED INDEBTEDNESS OF THE UNITED STATES,

FOR THE USE OF

HIS INVENTIONS AND PATENTS,

FOR

Several Millions of Fuzes and Percussion Apparatus for the Explosive Shells used to suppress the Rebellion.

WASHINGTON:
PRINTED BY POWELL & GINCK,
630, 632 F Street.
1873.

FORTY-SECOND CONGRESS, THIRD SESSION.

COMMITTEE ON NAVAL AFFAIRS.

Claim for Use of Several Million Hubbell's Patent Fuzes and Percussion Apparatus, and Patents therefor.

CASE OF

WILLIAM WHEELER HUBBELL.

OF PHILADELPHIA, PA.

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1. Congress may, as it did in this case, treat a claim in which there is no time, nor means in its committees, to obtain evidence and investigate, as though Congress were a high court of equity of the United States, by framing special issues or questions of fact, first as to originality, and second as to damages, similar to the practice of United States courts of equity in patent cases; and, like a court of equity, send these issues to a court of law to determine the facts, as if a verdict on them were given by a jury. Upon the verdict the case comes back to the high court of equity for full execution. This is precisely the form of Hubbell's case. This practice is similar to that often pursued between the equity side and the law side of the United States circuit courts in patent cases. The Court of Claims, to which the issues of fact were referred, has said substantially: We have been given no power by Congress to enter up a judgment of recovery on the Treasury for the full amount of Hubbell's reasonable actual loss and damage of $200,000. But we find that amount of his damage, and have power to enter up only for $66,666.66⅔.

It follows, in practice and justice, that Congress, the high court of reference, should enter judgment of settlement for the balance, $133.333.33\frac{1}{3}$ and interest, by an appropriation or act to pay it.

2. These two issues of fact referred—one, as to originality, and whether Hubbell is "*justly* and *equitably* entitled to compensation, and, second, what amount of compensation—fairly imply an agreement, or an *obligation* assumed by Congress. to finally pay to Hubbell such compensation as he may prove to be, and the court shall find to be, *just* or *reasonable* for the percussion patent, and shell and fuze patents and Bomford contract, or either of them, according to the usual practice at common law, to determine such a question; this is the $200,000.

And, further, it expresses an *obligation* on the part of Congress to pay $100,000 of this sum by authority of the proviso of the resolution at once on the decree, as a substitute and in full of all claim whatever, for the contract price of one dollar a shell under the alleged Bomford contract; and of royalty proved and claimed of two dollars a shell under the two patents, one for the shell casting and one for the fuze, concerning which inventions the Bomford contract was made, as shown by the preamble of the resolution. But not on account of the percussion apparatus patent separately set out.

Before the ascertainment of the amount of damage, Congress has seen fit to limit and restrict by the proviso of the resolution, the amount authorized to be paid *thereunder* to $100,000, and alleges that Hubbell agrees to accept that sum "in full of all claims whatever by virtue of said patents and contract against the Government." One of these claims was for a royalty of two dollars per shell, by virtue of the patent, from its date, being an alternative claim if the contract failed. The other and primary claim was for the contract price of one dollar per shell, made before the issue of the patent, as a secret invention. The

words "all claim whatever" covered both of these classes; and the words of limitation immediately following, namely, "by virtue of said patents and contract against the Government," did *not* mean nor say by virtue of *all of the* aforesaid patents, and of *said* contract. It meant only what the committee originally, in 1862, framed these words to mean, namely, by virtue of *said shell and fuze patents*, and *contract* of Bomford relating to these two same inventions. And not in any way including the *percussion* patent, afterwards and separately stated as a separate claim, and separate patent of different date and grant, in the preamble of the resolution of 1864, and not at all in that of 1862.

In 1862 is the time the alleged agreement, or proposition it is rather, of Hubbell, to accept $100,000 for these two, the shell and fuze patents, and in substitution for the Bomford contract, was made, Congress by its committee accepted the *sum* of the proposal, modifying the conditions by a reference, as in equity, to try the title. It framed this resolution of 1862 to express its agreement, and the same preamble and the same proviso to have the same meaning or express the same agreement, were both continued by the contracting parties, Congress or its committee, and Hubbell in the resolution of 1864. The addition of the percussion patent, afterwards as a separate claim in the preamble, brought it under the general reference of the first and second questions of fact, which were altered to admit of its separate consideration on the questions of originality, and of damages or compensation. And the originality and right to damage is separately answered by the court; and the damages on both the fuze patent and the percussion patent are collectively answered by the court at $200,000. Congress having agreed to pay $100,000 for the one, if Hubbell sustained his title and claim on the shell and fuze, or either, to that amount, leaves, by simple arithmetic, as the deduced answer, the sum of $100,000 for the percussion patent.

The proviso of the resolution of 1864, does *not* say, which sum the claimant agrees to accept in full of all claims whatever by virtue of *all of the aforesaid* patents, and also of said contract. It is simply a repetition of the same words "all claims whatever by virtue of said patents and contract," referring to the same recital in the preamble in 1864, as originated and was meant or agreed upon in 1862, and the resolution of 1862 is positive evidence of that fact, and gave no power nor right to take Hubbell's valuable percussion patent in addition for nothing. He proving on the reference, it to be of particular value, and that he was the original inventor.

The words "agrees" is sometimes used to mean only "proposes." An agreement to become a contract must be in writing, and possess both mutuality of consideration and fixed purpose, as to something to be done or not done. Here, if Hubbell *agreed* to receive $100,000 in full of all claims whatever by virtue of said shell and fuze patents, then Congress must have *agreed* to pay it. Hubbell has established his right to $100,000 for one alone of these patents, the fuze patent of 1862, and has only been paid $66,666.66⅔, being $33,333.33⅓ less than Congress agreed to pay him for this patent. Hubbell also established his right to $100,000 for the percussion patent, and has not been paid one penny on account of it. Congress having framed and referred the issues to determine this, thereby impliedly agreed to pay it, and the Constitution in preservation of Hubbell's rights as a citizen requires it to be paid. It is an ascertained debt of the United States, and Congress is required "to pay the debts of the United States," to see that private property is not taken for public use "without just compensation," and that the public debt is held "inviolate." The fact is, Congress cannot by the form of any reference or direction to a court, nor by impliedly or expressly becoming a party to any obligation or agreement, seek to avoid the payment of a "just or reasonable com-

pensation" to one of its citizens. This kind of oppression upon subjects, has been the basis for the overthrow of every monarchical government. It was, with unjust taxation, the basis of our revolution against Great Britain, and the citizens, of whom Hubbell, by his ancestors, were direct participants in such revolution and war, to establish this Government, have in both forms, the directory and prohibitory, put it beyond the power of Congress, to lawfully avoid the payment of a *just ascertained debt*, or to avoid giving a *just* compensation. And when the debt exists, either as damages in a tort, or on a contract *a priori*, a subsequent alleged agreement, made to avoid the just debt or just compensation, would be void, for want of constitutional consideration, that is, payment of a *just* compensation is the only lawful discharge of the debt.

To avoid this debt of $200,000, is to repudiate a judicially ascertained public debt of the United States, lay the foundation for a system of repudiation, notwithstanding the Constitution, and to set the duties as to paying debts expressed therein, at naught and at defiance.

Congress is not only a high court of equity to settle this debt, but it is a trustee of the people, to execute and be controlled by the provisions of the Constitution, and to avoid this debt, judicially found *justly* accrued to Hubbell as his loss and damage and gain to the United States, money of his therefore in the Treasury of the United States, being $200,000 upon proofs, in a fair trial and the principles of the common law, would be the beginning of endless repudiation; as any political party in power chose to exercise it, until the United States would have no credit and the people no faith.

This being a debt of the war, stands on the same platform as the bonded public debt. A debt incurred by necessity, in the exercise of the right of self preservation in the Government. If one, this, can be escaped, through alleged agreements which never were made, except as to

the shell and fuze patents and the Bomford contract; and which would be unconstitutional, as to an existing debt owed at the time by the United States, even if they were exacted of Hubbell, by duress of circumstances, and withholding from him money, as damages, which belonged to him. If such a debt can be escaped, or repudiated, then the public debt of the United States can be thrown off without payment, through alleged agreements, or considerations, as to differences in value between greenbacks or legal tender notes and gold, at the time of the issue of the bonds, in precisely the same manner, and repudiation of the public debt become an established system, through judicial reference, and direction of Congress to the referees, notwithstanding the Constitution.

This principal or system of repudiation once attempted to be put in force on Hubbell, he will have a legal right, to turn from the decree and alleged agreement as stated, as in a case of legal fraud, and demand redress of Congress, in a right to a full reassessment of the damages by the Supreme Court of the United States upon the evidence, in his favor, which will, specifically stated, amount to at least six hundred thousand dollars from the dates of these patents, instead of only two hundred thousand.

The letter of January 11, 1873, of the Hon. William Whiting, member elect to the next Congress, from Massachusetts, and now filed, shows that at the time this resolution and agreement of 1862 was on the House calendar in 1863, Hubbell was negotiating or applying for a contract of *royalty* with the War Department, on his percussion patent; not a part of such resolution; was referred to Congress. He petitioned in January, 1864, for its purchase, and in 1864 it was added to the old resolution, which was altered in the second issue, for it to be separately considered, that it should be paid for of course, and not included in the old agreement, without any additional compensation whatever. Such would be "piracy" as

the court expresses it, by wholesale, and *tort* upon *tort*, a violation of the legal maxim "that no man (nor Government) shall take advantage of its own wrong, with repudiation of an existing debt superadded.

Furthermore, it is not competent for Congress to legislate for a court, in entering up the amount of a verdict or finding of damage, for the purpose of avoiding the payment of the *just* compensation, or actual damage. It may direct as to a judgment of recovery, to be paid forthwith from the Treasury, under its control of the appropriation of money; but it cannot do it *to avoid the debt.* Neither can Congress set up an alleged agreement nor ambiguity of its own words, to avoid the full damage ascertained in pursuance of and direct response to an issue in the reference. There is no consideration or mutuality to make it an agreement. It was a proposal of Hubbell not accepted as proposed, and as to only two of the patents, the shell and fuze, and both amount and time of payment were of its essence. What consideration was Hubbell to have for the expense and carriage of his law suit to fix his damage? Was he to be paid $100,000, if he established the originality and $10,000 damages or $50,000 damages, or was the United States to have the privilege of destroying his patents, if it could, and of not paying for them if it could not?

Was the suit one always winning on the side of the United States, like the boy with the tossing penny, heads the United States wins, and tails Hubbell loses?

If, according to the supposed version of the court, to test its unsoundness on the theory of an agreement, Hubbell proved one fuze patent alone valid, and his damage $500,000, he was to have only $33,333.33⅓, and if he sustained two patents as valid, and his damage on both $200,000 he was to have $66,666.66⅔. And if he sustained three patents and damages to only $100,000, then he was to have $100,000. Where is the just and equitable con-

sideration of any alleged agreement; that the more damages he proved in direct response to the second issue of the reference, the less damages or pay he was to receive? If any such agreement as that had been made, which however was not, it would not be valid, and it cannot be raised by implication. The considerations of mutuality to constitute an agreement were not there, to override the general verdict of damages in Hubbell's favor. The court does not say that there was any such agreement; but says that Congress limited the appropriation from the court fund, to $100,000 for three patents, and therefore it allows two-thirds or $66,666.66⅔ out of this fund for the two patents. And that Hubbell signing the petition to bring up the reference or resolution which he was compelled to do by Congress and the rules of court, is a presumption, that he agreed to abide by the "damages"—"*damages*" is the word, and these "damages" are the $200,000, the balance of which he now claims an execution or appropriation for from Congress. Hubbell's petition pleads $882,500 royalty or damages, and calls for accounts in the usual form in equity practice.

The putting of the second question by Congress, to determine the just and equitable compensation or damage, created an *obligation* upon Congress to pay such damage when ascertained; and any limited cotemporaneous payment must be only on account of the sum total of the damage.

The ministering Angels of Justice, have been hovering over this case, to see that the scales are true, and the sword sharp, in this conflict between the United States and the inventor of her war powers so potent in giving freedom to millions; for the alleged compensation agreed upon for the shell and fuze patents $100,000, is precisely the one-half of the whole sum, and this one-half or $100,000, is fairly allotable to that branch of the case, and the other half or $100,000 is allotable to the percussion patent.

If there was any valid agreement, then *Congress* obligated itself to pay Hubbell $100,000 for his shell and fuze patents or either of them, if both or either proved valid, and the use amounting to $100,000 damage to him. The fuze proved valid and alloting one-half of the whole damage of $200,000 to it, he has proved the $100,000, and received only $66,666.66⅔. There is yet $33,333.33⅓ due to Hubbell on this patent, under the alleged agreement to pay, and to receive $100,000.

Further, Congress by including and referring the percussion patent, to determine the compensation or damage under it, thereby *obligated* itself to pay this damage, when judicially found as reasonable, on the proofs as at common law. This has been found also at $100,000, the other half in the allotment of the $200,000, and not a penny of it paid.

The two deficiencies $33,333.33⅓ and $100,000, make up the sum of $133,333.33⅓ decree rendered January 24, 1870, which under the general law as to judicial judgments against the United States, bears 5 per cent. interest per annum, amounting to $20,000 more for the three years, being the whole sum of $153,333.33⅓ now claimed, as proved and established reasonable damage or compensation unpaid.

Submitted respectfully,

WM. WHEELER HUBBELL.

To the Committees on Naval Affairs of Congress.

Washington, *January* 27, 1873.

WASHINGTON, *January* 23, 1873.

HON. GLENNI W. SCOFIELD,

Chairman of the Committee on Naval Affairs.

I wish to say to yourself and your committee that while I am bound for the benefit of my creditors and to pay my debts, to accept whatever money Congress tenders to me, at any time in my claim, yet I never can voluntarily consent to the repudiation of any part of a judicially ascertained debt of the United States.

If the United States can by duress in withholding money, and legislation for a court, avoid a just debt, or an adjudicated obligation or debt, such as it owes me, then any political party which chooses at any time to exercise such a precedent or power, can repudiate a great part of the face value of the bonded debt of the United States, notwithstanding the Constitution, on alleged differences between notes and gold at the time of its issue, or any other alleged ground.

I am an adjudicated creditor of the United States on grants under its seal. The ascertained debt was $200,000 on the proofs at common law and in fact. The unpaid balance is $133,333.33⅓ and with the usual legal interest of five per cent., being the same interest that was paid on the first instalment of the debt, this alone is $20,000, making the $153,333, for which I drafted a bill in the form of the former committee bill. In it are included *three* additional valuable patents not yet in use, and of course I could make no claim on them. They are for a concussion fuze, incendiary shell, and rifle shell, and I am willing to make the concession of transferring them to complete the Naval shell system for future use, without additional compensation. I claim the established debt and ask the concession of allowance of the interest on this balance, for the same reason it was paid on the first portion, that is, it is an *adjudicated* indebtedness of the United States in my favor.

Respectfully,

WM. WHEELER HUBBELL.